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AUTHOR Tellier, Jacques
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ABSTRACT

This paper brings together and discusses the implications of various statements of children's rights and legislation protecting children. The Declaration on the Rights of the Child, proclaimed by the General Assembly of the United Nations on 20 November 1959 is detailed in terms of individual and social rights. The new (1979) Youth Protection Act of the Province of Quebec: legislation aimed at protecting the security and development of Canadian children and youth under 18 years of age who are in trouble or are at risk is discussed. Under this Act the Child has the same rights and can enjoy the same fundamental freedoms as an adult. Implications of the Canadian legislation for intervention are highlighted. Intervention should be done in a manner that gives the child more self-determination, respects his potentialities and assures him of available services and resources and does not make decisions for him. The child should be treated as an active subject whose potentialities constitute essential elements of the intervention. In conclusion, some limits of legislation are indicated. (Author/RH)

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LEGISLATIVE SUPPORT FOR THE SOCIAL INTEGRATION OF THE CHILD

Me Jacques Tellier
President

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505, boulevard Dorchester West, Montreal, Québec H2Z 1A8

LEGISLATIVE SUPPORT FOR THE SOCIAL INTEGRATION OF THE CHILD

Perhaps the title of this paper may seem ambitious for, in Québec alone, there is a considerable amount of legislation of a social nature that can contribute towards the integration of the child into society. Having neither the time nor the competence to go into all that legislation here, it is not my purpose to do so. In spite, therefore, of its title, my subject will be a limited one.

Because we share the same preoccupations as regards the child, even if we are of different origins and training backgrounds, I felt I should remind you first of all of a piece of legislation of universal scope relating to the integration of the child, and that is the Declaration on the Rights of the Child, proclaimed by the General Assembly of the United Nations on 20 November 1959, and the Project of Convention designed to complete that Declaration and which is now being studied by the United Nations Commission on Human Rights. I should next like to call your attention to the new Youth Protection Act which was passed in Québec at the beginning of the International Year of the Child. Finally, and in conclusion, I should like to underscore the limits of any legislation and therefore certain conditions that have to be implemented so that the legislation doesn't simply remain a dead letter.

Declaration of the Rights of the Child

We know the ten principles advanced by that Declaration. We also know that the United Nations Human Rights Commission has been studying for some time now a Project of Convention relating to the rights of the child. That Convention, according to the feeling of the Commission, should spell out the Declaration in detail in taking into account the actual problems encountered by children. It

seems a good time to formulate certain proposals regarding the contents of such a Convention.

In our opinion, a Charter of the Rights of the Child ought to contain two fundamental assertions:

- an assertion of rights relating to the person of the child: individual rights;

- an assertion of rights relating to the survival and social integration of the child: social rights.

It will no doubt be noted that these objectives of survival and integration are precisely the topics of discussion of the first two days of this convention.

Individual Rights

When the rights relating to the person of the child are recognized, we see the child as a person at a stage in his life. On this point, we must turn to the reflections of Mr. Janusz Korczak, the anniversary of whose death was observed by UNESCO last year. In his books "The Right of the Child to Respect" (1) and "How to Love a Child" (2), Mr Korczak invites us to accustom ourselves to seeing childhood not just as a period of development in the process of reaching adulthood, but rather as a state of life

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(1) Unesco 1979; éditions Robert Laffont (1979)

(2) Editions Robert Laffont (1978)
Both English titles given of these two works here are freely translated.

as important in itself as maturity. A Charter of Rights of the Child, therefore, should, according to him:

- clearly recognize the child as a full-fledged human being;

- not confuse the rights of the child and the obligations of adults towards children;

- not place the burden on the child of his duties as a man of tomorrow without granting him his rights as a man of today;

- give the child the right to speak out;

- not always be couched in terms of the child in difficulty, but consider the child as normal in every way;

- explicitly recognize that the child has certain rights:

  - the right of the child to be what he is, his right to be a child;

  - the right to live today a responsible life, taking his capacities into account;

  - the right to be in error;

  - the right to be heard and consulted.

In asserting that the child has rights arising from his status as a full-fledged person, we recognize in him the right to be different from an adult and thus contribute to eradicating discrimination based on age. It seems to us

important to recognize that children are not adults in miniature but that they have their own way of living and they differ from adults in how they function.

The child entitled to personal interests has, therefore, other rights than that of receiving from adults what the latter alone consider to be his interests. That is why that, in drawing up a Declaration of the Rights of the Child, it is no doubt essential to consult the children and enable various countries to undertake a consultation process with their children in order to determine if a new Declaration can be adjusted to the reality of the children of today.

In conclusion, we think that the child has distinct individual rights and that he is entitled not only to see that they are respected, but to be represented in having them enforced. We propose, then, to consider the child as a full-fledged citizen in society, with all human rights that his status as a citizen entitles him to enjoy. We are not forgetting, in spite of that, that a balance must be reached between the rights of the child as an individual, his need for self-determination, and his right to guidance and protection - meaning his need for support and direction. We simply want to insist that his need for support and direction not be the only reality adults take into consideration.

Social Rights

In regard to rights relating to the survival and social integration of the child, it is essential as Mr. Francis Saulnier has stated, that each country, no matter its political regime, its type of civilization, its family and social structures can subscribe to a universal charter. Certain general principles must therefore be recognized within which each country can map out its own routes to

achievement. These principles can be expressed in the form of rights:

- the right to be desired;
- the right to be born healthy and to live in a healthy environment;
- the right to have his basic needs met, in regard to physical and moral well-being, education, and his development as a whole;
- the right to be loved;
- the right to intellectual and emotional development;
- the right to adequate health, social and educational services, that are at the same time scientific, human and social, and in a continuing and personalized way.

It is up to each country to spell out these rights in specific laws which take into account the circumstances particular to that country, and to provide the conditions of application of these laws and the penalties incurred by those who contravene them. A right, in fact, seems to be accorded a concrete existence only when it is denied.

To assure children respect for their rights, it would be fitting to recognize their own collective identity and to establish, where necessary, a suitable structure which would allow that collectivity, particularly in certain underprivileged and overpopulated areas, to have a voice and that it be heard.

It might well be asked if, since the Declaration of 1959, we have made much progress in this field of children's rights. We have to admit that, in all countries, certain rights asserted in the Declaration with respect to particular classes of children have remained a dead letter. That is why, in spite of the great merit of a Charter which, by its moral value, can centre the attention of a period on childhood, and give the guidelines and the direction to a programme of action, it is still a fact that efforts must be directed just as much, if not more, to alerting public opinion with the aim of developing a community conscience, as to the Declaration itself. Even though it happens to be a document of social and human consequences considered to be just and equitable, a Charter is often absent and ignored when there comes a question of action on behalf of certain classes of children in our respective countries.

The Charter is the expression of a philosophy in regard to which means must be found that will enable it to be applied in a concrete and efficient manner in every day situations. The adherence of a large number of countries to the same ideal does not necessarily result in uniformity in the implementation of the principles expressed in international documents. Legislation varies from one country to another and as much according to tradition and social and political choice, as to economic conditions.

Québec, for its part, has passed an abundance of legislation which, in various ways, has contributed you may rest assured to the social integration of the child. However, the very multiplicity of these laws and their variety scarcely permits of discerning the social identity of the Québec child. It should be realized, though, that important legislative efforts have been undertaken these last few years to reform family law and the rights of children who are in difficulty. It will suffice for me to mention Bill

89, "An Act to establish a new Civil Code and to reform family law", introduced in the National Assembly this year, and also the new "Youth Protection Act", brought into force in 1979 and on which we will now fix our attention.

Youth Protection Act (3)

The problems of children and the young bear at least a certain resemblance in most countries. During the period of drafting its new Youth Protection Act, Québec examined various legislation from other jurisdictions. While influenced by certain of that legislation, the Québec system has, in its structure and its operation, an originality of character, especially on one essential point: the clear and explicit acknowledgement and assertion of the rights of the child in difficulty. Already in 1975, the Charter of Human Rights and Freedoms (4) had defined the rights of everyone including the child, who is no longer considered as the object of, but as subject to, rights.

The Young in Difficulty

The Youth Protection Act is directed at the child or the young person in difficulty, that is to say, at any person who has not reached his eighteenth birthday and whose security and development is in danger. The legislator has

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(3) S.Q. 1977, c.20

(4) S.Q. 1975, c. 6

specified the circumstances which could indicate that the security or development of the child is threatened. Thus, the Act concerns itself with:

- the child who is orphaned, abandoned, or whose parents seek to be rid of him, and no other person is taking care of him;

- the child whose mental or emotional development, or his health, is threatened through isolation or the lack of appropriate care;

- the child who is deprived of the material conditions of life appropriate to his needs and to the resources of his family;

- the child in the custody of a person whose behaviour or way of life creates a risk of moral or physical danger for the child;

- the child of school age who does not attend school or is frequently absent without reason;

- the child who is the victim of sexual assault or is subject to physical ill-treatment through violence or neglect;

- the child who has serious behaviour disturbances;

- the child who is forced or induced to beg, to do work disproportionate to his strength or to perform for the public in a manner that is unacceptable for his age;

- the child who runs away from a reception centre, a foster family or his own home.

To these situations must be added those of the young who have broken a law or regulation in force in Québec, it being understood that the Director of Youth Protection must be apprised of the case before there can be any prosecution.

It is not the intention of this paper to outline the structures or mechanics of intervention contained in the new law. I just want to draw your attention to a fundamental principle which points up and explains the dynamism of this legislation and which can be defined thus: the young have rights, adults are responsible for ensuring the exercise of these rights which must be carried out by means of intervention policies.

Recognition of Rights

Before proceeding with any other provision and at the very outset, the new Youth Protection Act recognizes and asserts that children have rights. Even more, it states that "respect for the rights of the child must be the determining consideration in making any decision in his regard under this Act".

To the concept of the child's "interest", which was the basic criterium in the application of a former Youth Protection Act in force in Québec up to 1979, the new Act adds the concept of "right". It had always been the prerogative of the adult to define, in each case, what was in the child's best interest; it could not, most of the time, anyway, have been otherwise. But one could wonder if that definition, generally expressing the adult's perception of things, properly coincided with the child's real interest. The concept of "right" is more objective; the legislator

undoubtedly believed that it could better centre attention on the child and awaken the adult to a more just intervention with regard to the child.

There may be some surprise, perhaps, in seeing the rights of the child thus proclaimed - a certain conception having accustomed us to consider the child as the parents' property - or, in their lack, of the State where the latter intervenes on his behalf. Without contesting in any way whatsoever the natural and primary bond between the child and his parents, nor yet the duty of deputy belonging to the State, the legislator insists in reminding us that the child is a full-fledged citizen and as such has fundamental rights that must be respected and defended with particular care, especially so as frequently his tender age scarcely permits of his doing so himself.

These rights of the child, recognized in the new Québec legislation and concerning which their "respect must be the determining consideration in making any decision in his regard", is summarized as follows:

- entitlement to receive adequate health services and social services and educational services, on all scientific, human and social levels, continuously and according to his personal requirements;

- entitlement to remain as long as possible in his natural environment, or at least in conditions of life and development as nearly similar to those of a normal family environment as possible;

- entitlement to be an active party in measures concerning him, that is to say:

- entitlement to be informed, consulted, to consult an advocate, to be assisted by any person wishing to intervene in his interest, to be heard himself, and have these persons heard on his behalf;

- entitlement to a description of the means and stages of rehabilitation and protection envisaged towards ending his being taken in charge through return to his family, if that is in keeping with his interest, or through organization and adaptation of his conditions of life to make them correspond to a normal environment for his age;

- entitlement to refuse any proposed measure not ordered by the Youth Court;

- entitlement to address the Youth Court himself, to be represented there by an advocate, and to appeal to the Superior Court or the Court of Appeal from any decision of the Youth Court;

- in a reception centre or foster family: entitlement to communicate in all confidentiality with his advocate, the Director who has taken him in charge, the Committee, the judges and clerks of the Youth Court and, unless the Youth Court decides otherwise, with his parents, brothers and sisters or any other person;

- in a reception centre: entitlement to a copy of the internal rules of the establishment and to accept only the disciplinary measures that are

in conformity with these rules, which must be posted up in a conspicuous place in the establishment and of which a copy must also be delivered by the establishment to his parents, to the Youth Protection Committee, the Minister of Social Affairs, the regional council, and to the social service centre;

- entitlement not to be placed in a house of detention or in a police station;

- entitlement to confidentiality, to anonymity, and the destruction of records concerning him when he has reached the age of eighteen years.

As can be seen, under this Act the child has the same rights and can enjoy the same fundamental freedoms as an adult. However, given his age, dependence, his inexperience, and especially the difficult situation which is his and for which he must, as a natural consequence, benefit from the Youth Protection Act, he cannot exercise these rights without the cooperation of the adult who must see to that exercise by means of intervention policies.

Intervention Policy

The Québec legislation proposes respect for rights as the intervention criterium. Thus it is that the right to support in the natural environment asserts the primacy of parental responsibility and the primacy of a sociological framework natural and common to individuals as a whole. That is why the Québec legislator has asserted the necessity of calling upon, to the greatest possible extent, the persons and organizations working in the natural environment of the child. As the Minister of State for Social Development, Mr.

Pierre Marois, put it when the Bill was presented for second reading in the National Assembly:

> "What we were thinking of was to have the director of youth protection exercise his role with a great deal of flexibility and to make the maximum possible use of the resources of the milieu.
>
> He will especially have to take the means necessary to assist families when they are confronted with problems, rather than systematically remove the children from the families...
>
> He will also have to increasingly develop confidence in that capacity of the milieu to take its own responsibilities..." (5)

The right to adequate health services, social and educational services gives rise to the problem of resources and structures. In that respect, the first preoccupation must not be to introduce the child with the littlest possible harm into a system, but to try to the utmost to meet his individual needs, even if that means adapting the structures and services.

The right to be informed, consulted, heard, and to give his consent entrenches the principle that the child can express his own opinion, taking into account his capacity to do so. For those who would intervene, this right implies that they must consider how the right can be exercised with

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(5) Journal des débats, 24 November 1977, pp. 4327 and 4330

usefulness and in a suitable manner, taking into account the child's development. They must keep in mind that the objective is to give the child more self-determination, to respect his potentialities and, in that sense, to assure him of an availability rather than to decide almost a priori in a unilateral intervention context. The adult is invited to develop confidence in the capacity of the child to actively participate in his own taking in charge and the taking in charge of his environment. In that respect, the child becomes an active subject whose potentialities constitute the essential elements of an adapted intervention.

The right to consult an advocate, to be represented by an advocate and to be assisted by an adult to put his case to the competent authorities aims essentially at guaranteeing the child respect for his rights and fundamental freedoms, and assuring him of the same procedural guarantees granted to everyone.

The right of review by the administrative and judicial authorities is provided so that situations can be reconsidered in order to verify if the promised care is given, if it is adequate, and if its continuation is justified. Another objective of this right is to restudy the definitive "labelling" of the child and to ensure that the treatment is constantly adapted, in keeping with the needs of the child and in line with his development.

The Youth Protection Committee is the custodian of these rights of the child. Its duty is to re-examine all situations of children who are victims of sexual assault or physical ill-treatment through violence or neglect, and it can re-examine all other cases of children or young people in difficulty. The Committee also has the power to investigate any situation where it has reason to believe the rights of a

child have been encroached upon. These powers of re-examination and investigation are the mechanisms guaranteeing respect for the rights of children; the Committee thus becomes the Ombudsman for children and young people in difficulty.

Conclusion: Legislation Limits

Between the feelings that a community has for its children and the application of the legislation that it has prepared to throughly translate these feelings into the social life, there is always a gap. That gap is due partly to the very reality that is the object of the legislation, and partly to the various factors relating to the application of the law.

One of the first objectives of legislation concerning the child is to put an end to the tendency of society to create artificial life environments for children in general and, in a particular manner, for those in difficulty: children ill-treated, abandoned or exploited, the sociably maladjusted, juvenile delinquents, the physically or mentally handicapped. Legislation is ordinarily aimed at seeing that the majority of these children or young people are not set apart, or compelled to live on the fringe of society. To counteract that tendency, the laws recognize equality of rights and entrench personal and collective responsibility in the exercise of these rights. But if the person is chiefly responsible for his own development and the State is not allowed to take over that responsibility, then the State must at least perform a supporting role in order to afford assistance to the child and the parents in the exercise of their responsibilities, and to assure greater equality to all in their access to essential goods. In fact, the equality of rights and the

equality of opportunity require that each one have the same access to services which have an overwhelming influence on development.

But if the law can contribute to maintaining the child in his natural environment and thus assure both him and his parents a certain number of services, it can hardly be expected to guarantee respect for certain fundamental rights. What law, in fact, can guarantee the child the right to be desired, to be loved, to be accepted, indeed, even to be different from an adult?

The limits of legislation are also tied to a certain number of factors relating to its application; for example, to the understanding one has of the Act, to the criteria used in its application, to the means available for implementing it, and to the structural conditions or the persons one has to deal with. On this latter point, if certain legislation, while being truly an educative document and clearly manifesting the values inspiring it, can compel behaviour in conformity with its values, it will still not be fully able to command changes in attitudes. It is, then, at the level of attitudes in regard to the child that there can take root as a society project not just a right of childhood, but at the same time an overall policy for childhood which goes beyond the approaches of specialists, whether on the legal, medical, social or cultural level.

Our thanks are due to the organizers of this XVI World Assembly for inviting us to reflect upon the child from the point of view: "The Young Child, Full-Fledged Citizen?"